

309.418 Grounds for refusal to issue or renew, suspend, or revoke a license or otherwise discipline a licensee -- Reinstatement -- Expungement of minor violation -- Administrative regulations.

- (1) The board shall refuse to license, or shall suspend a license, if the person seeking or holding a license has ever been convicted of or entered an Alford plea or plea of nolo contendere to a sex crime as defined in KRS 17.500, a criminal offense against a victim who is a minor as defined in KRS 17.500, a felony offense under KRS Chapter 209, or an offense which would classify the person as a violent offender under KRS 439.3401.
- (2) The board may refuse to issue or renew a license, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, for the following reasons:
 - (a) Unprofessional or unethical conduct;
 - (b) Mental or physical incapacity that prevents the licensee from engaging or assisting in the provision of home medical equipment and services with reasonable skill, competence, and safety to the public;
 - (c) Being convicted of or entering an Alford plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following:
 1. A felony;
 2. An act involving gross immorality; or
 3. A violation of the home medical equipment laws, rules, or administrative regulations of this state, any other state, or the federal government;
 - (d) Knowing or having reason to know that a home medical equipment and services provider is incapable of engaging or assisting in the practice of providing home medical equipment and services with reasonable skill, competence, and safety to the public and failing to report any relevant information to the board;
 - (e) Knowingly making or causing to be made any false, fraudulent, or forged statement or misrepresentation of a material fact in securing issuance or renewal of a license;
 - (f) Engaging in fraud in connection with the practice of the provision of home medical equipment and services;
 - (g) Engaging in or aiding and abetting an individual to engage or assist in the provision of home medical equipment and services without a license or falsely using the title "home medical equipment and services provider," "provider," or other term which might imply that the individual is a home medical equipment and services provider; or
 - (h) Violation of any order issued by the board to comply with any applicable law or administrative regulation.

- (3) As used in this section, "unprofessional or unethical conduct" includes but is not limited to the following acts of a home medical equipment and services provider:
 - (a) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a sick or disabled person, or engaging in conduct which substantially departs from accepted standards of providing home medical equipment and services ordinarily exercised by a home medical equipment and services provider, with or without established proof of actual injury;
 - (b) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
 - (c) Obtaining any remuneration by fraud, misrepresentation, or deception;
 - (d) Providing home medical equipment and services that carry a legend or require a prescription without a medical order from a licensed health care practitioner; or
 - (e) Willfully or knowingly failing to maintain complete and accurate records of home medical equipment and services provided in compliance with federal and state laws, rules, or administrative regulations.
- (4) Any licensee who is found guilty of or enters an Alford plea or plea of nolo contendere to a violation prescribed in subsection (1) or (2)(c) of this section shall, within thirty (30) days, notify the board of that conviction or plea. Failure to do so shall be grounds for suspension or revocation of the license.
- (5) Any person whose license has been revoked in accordance with this section, other than a person whose license was revoked for being convicted of or entering an Alford plea or plea of nolo contendere to a sex crime as defined in KRS 17.500, a criminal offense against a victim who is a minor as defined in KRS 17.500, a felony offense under KRS Chapter 209, or an offense which would classify the person as a violent offender under KRS 439.3401, may petition the board for reinstatement. The petition shall be made in writing and in a form prescribed by the board. The board shall investigate all reinstatement petitions, and may reinstate a license upon a showing that the former holder has been rehabilitated and is again able to engage in the practice of providing home medical equipment and services with reasonable skill, competency, and safety to the public. Reinstatement may be on the terms and conditions that the board, based on competent evidence, reasonably believes necessary to protect the health and welfare of the citizens of the Commonwealth.
- (6) Upon exercising the power of revocation provided for in subsection (2) of this section, the board may reasonably prohibit any petition for reinstatement for a period up to and including five (5) years.
- (7)
 - (a) A licensee who is disciplined under this section for a minor violation may request in writing that the board expunge the minor violation from the licensee's permanent record.
 - (b) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee has completed disciplinary sanctions imposed and if the licensee has not been disciplined for any subsequent violation of the

same nature within this period of time.

- (c) A person shall not have his or her record expunged under this section more than once.
- (d) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish what are considered minor violations under this subsection. A violation shall be deemed a minor violation if it does not:
 - 1. Demonstrate a serious inability to practice the profession;
 - 2. Involve the provisions of home medical equipment and services;
 - 3. Adversely affect the public health, safety, or welfare;
 - 4. Result in economic or physical harm to a person; or
 - 5. Create a significant threat of such harm.

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